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THE MINIMUM VOTE IN OSTRACISM

It is a much-vexed question whether the six thousand votes required to ostracize a citizen of Athens constituted a majority or a quorum. Plutarch's statement in his life of Aristides (7) is explicit and conclusive in favor of a quorum: οἱ δ' ἄρχοντες πρῶτον μὲν διερίθμουν τὸ σύμπαν ἐν ταύτῳ τῶν ὀστράκων πλῆθος· εἰ γὰρ ἑξακισχιλίων ἐλάττονες οἱ φέροντες εἴεν ἀτελής ἦν ὁ ἐξ-οστρακισμός· ἔπειτα τῶν ὀνομάτων ἕκαστον ἰδίᾳ τιθέντες τὸν ὑπὸ τῶν πλείστων γεγραμμένον ἐξεκέρνυον εἰς ἑτὴ δέκα. But Plutarch is the only ancient writer who states explicitly that six thousand votes constituted a quorum. Diodorus (xi. 52, 2) simply says that the man who received the majority of votes cast went into exile. The article in the *Etymologicum Magnum*¹ mentions a minimum vote of six thousand without specifying whether it was a quorum or a majority. In favor of a majority the strongest evidence is a quotation from Philochorus in Pollux²: διαριθμηθέντων δὲ (τῶν ὀστράκων) ὅτ' πλείστα γένοιτο καὶ μὴ ἐλάττω ἑξακισχιλίων τοῦτον ἔδει . . . ἐν δέκα ἡμέραις μεταστῆναι τῆς πόλεως ἑτὴ δέκα. ὕστερον δὲ ἐγένοντο πέντε.

It is well known that quotations in ancient writers are frequently inaccurate. Even orators and historians do not always reproduce the exact wording of laws and treaties. Greater fidelity is not to be expected from the compilers of notes, lexicons, and handbooks. As it stands, the passage bears evidence of compression. It is entirely possible that in the process of compression and transcription the meaning was changed. This is not a gratuitous suspicion. For the statement in the last sentence that the term of banishment was subsequently reduced to five years is manifestly incorrect.³ It behooves us, therefore, to be cautious in rejecting the clear statement of Plutarch on the strength of a lexicographer's report of the account of Philochorus which in at least one particular is incorrect.

It is now generally recognized that ostracism belongs to the class νόμοι,⁴ or ψηφίσματα ἐπ' ἀνδρί, for which a minimum vote of six thousand was required. But unfortunately here also the sources are ambiguous. The plaintiff in *Theomnestes v. Neaera* (Demos. lix. 89) recites the condition of a vote conferring citizenship in language that clearly implies a quorum. οὐκ ἐὰ (ὁ νόμος) κυρίαν γενέσθαι τὴν ποίησιν, ἐὰν μὴ τῇ ψήφῳ εἰς τὴν ἐπιούσαν ἐκκλησίαν ὑπερεξακισχίλιοι Ἀθηναίων ψηφίσωνται κρίβδην ψηφιζόμενοι.

¹ S.v. Ἐξοστρακισμός: ἑξακισχιλίων δὲ γινομένων (τῶν ὀστράκων) φυγὴ δεκαετὴς ψηφίζεται τοῦ κρινομένου.

² Appendix, p. 67, ed. Porson. Cf. *Lex. Cantabrigense*, s.v. ὀστρακισμοῦ τρόπος. The scholiast on Aristophanes' *Knights* 855 to the same effect has no independent value.

³ Gilbert, *Griech. Altertümer*, p. 346, n. 4; Martin, *Notes sur l'ostracisme dans Athènes*, p. 39.

⁴ They are ψηφίσματα rather than νόμοι, and include votes conferring immunity (ἀδεια) and citizenship; cf. Martin, *op. cit.*, p. 42. Carcopino, *Histoire de l'ostracisme*, p. 166, seeks to differentiate ostracism from ψηφίσματα ἐπ' ἀνδρί. But this technical differentiation does not alter the fact that the same principle is involved in both.

But elsewhere Demosthenes (xxiv. 45) puts the restriction less clearly: *ἐὰν μὴ ψηφισαμένων Ἀθηναίων τὴν ἄδειαν πρῶτον μὴ ἔλαττον ἑξακισχιλίων, οἷς ἂν δόξη κρίβδην ψηφίζομένοις*. In the summary of the law which follows, he uses *μὴ ἔλαττον ἢ ἑξακισχιλίων ψηφισαμένων* to express the condition. Andocides (i. 87) quotes the law in practically the same form as Demosthenes. Those who believe that the six thousand votes both in ostracism and in *ψηφίσματα ἐπ' ἀνδρί* constituted a quorum rightly point out that the words *οἷς ἂν δόξη* do not imply a unanimous vote any more than the formula in decrees *ἔδοξεν τῇ βουλῇ καὶ τῷ δήμῳ* implies a unanimous vote of the senate and the assembly.

Such is the material available for deciding this important question. Much ingenuity has been exhibited in adducing arguments on both sides; but the latest and most exhaustive discussion of the subject shows that on the basis of this material no final solution is possible.¹ There is, however, a phase of the question which has been strangely neglected. It is the relation between the minimum number of jurymen annually selected by lot and the minimum vote in ostracism and *ψηφίσματα ἐπ' ἀνδρί*.

Though the dicasts commonly performed their functions in distinct sections they really constituted a single body under the chairmanship of the Thesmothetae. The heliastic oath was annually administered to them in a body.² On occasion the whole panel sat in judgment.³ Under certain circumstances the ecclesia acted as a judicial body; under others it was represented by the dicasts sitting as a body or in sections.⁴ The representative character of the juries is shown by the forms of address *ὦ Ἀθηναῖοι*, *ὦ ἄνδρες Ἀθηναῖοι*. In joining the senate in the oath confirming the treaty with Chalcis the dicasts acted for the assembly.⁵ Indeed Fränkel argues that "six thousand Athenians" and "all Athenians" are in certain connections equivalent expressions.⁶

The requirement that this representative body should number six thousand cannot be accidental. The number must possess some significance. The most natural explanation is that under certain circumstances a quorum of the assembly was required to be present. The notion of a quorum was familiar to the Athenians. In a decree of a deme occur the

¹ Carcopino, *op. cit.*, pp. 150 ff., presents the strongest possible arguments in favor of the majority theory.

² Gilbert, *op. cit.*, pp. 439 ff.

³ Andocides i. 17. Lipsius, *Das attische Recht*, p. 135, n. 3, points out that the reference is not to a meeting of the assembly as Fränkel argued.

⁴ "Verisimilmente eliea non è stato in origine che un altro nome della *ἐκκλησία*, l'assemblea popolare. Poi il significato dei nomi s'è differenziato: l'uno è passato a significare l'assemblea popolare in quanto emana leggi e decreti: l'altro l'assemblea in quanto giudica e di qui, con facile passaggio, i tribunali popolari."—De Sanctis, *Storia della Repubblica Ateniese*, p. 250.

⁵ CIA, IV, 29a.

⁶ *Die attischen Geschworenengerichte*, p. 16.

words ὁ δῆμαρχος . . . διδότην τὴν ψῆφον ἐὰν παρῶσιν μὴ ἡλᾶττους ἢ ΔΔΔ.¹ And the phrase δῆμος πληθύνων evidently describes a quorum.² There is no trace of a quorum in the case of the regular deliberative meetings of the ecclesia. But the practice in connection with ostracism and ψηφίσματα ἐπ' ἀνδρὶ suggests that precautions to secure a representative vote were taken when the interests of an individual were at stake, i.e., when the assembly was exercising judicial or semijudicial functions. Direct proof of this theory is lacking; but Fränkel adduces, in support of his view that "six thousand Athenians" and "all Athenians" are synonymous expressions, some arguments that are of interest in this connection. He cites a passage from Demosthenes (xxiv. 46) dealing with ἄδεια in which the condition μὴ ἔλαττον ἢ ἑξακισχιλίων ψηφισαμένων is repeated by εἰ πᾶσιν Ἀθηναίοις ἐδόκει. Another instance of this technical use of "all Athenians" as the equivalent of "six thousand Athenians" occurs in Xenophon's *Hellenica* (i. 7, 9). Καλλίξενος εἶπεν· ἐπεὶδὴ τῶν τε κατηγορούντων κατὰ τῶν στρατηγῶν καὶ ἐκείνων ἀπολογουμένων ἐν τῇ προτέρᾳ ἐκκλησίᾳ ἀκηκόασι, διαψηφίσασθαι Ἀθηναίους πάντας κατὰ φυλάς. It is only reasonable to suppose that the same care that was taken to protect the interests of a citizen in the case of ostracism or the interests of the community in the case of ψηφίσματα ἐπ' ἀνδρὶ should be taken to protect the interests of a citizen on trial before the assembly. It is true that this object could be achieved by the requirement of a fixed majority of six thousand. But the majority theory furnishes no explanation of the practice of selecting a jury panel of six thousand. If, however, a quorum of six thousand was required in an assembly performing judicial functions, it was entirely natural that when judicial functions were delegated to a smaller body of citizens their number should correspond to the quorum. The representative character of the dicasts accounts for their being regarded as a single body even though they were divided into sections.

The theory that six thousand constituted a quorum has the advantage of affording a single explanation of all occurrences of six thousand as a minimum requirement. When once it is recognized that a single principle is involved,³ there can be no question of a majority. The conclusion that six thousand constituted a quorum is inevitable.

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¹ Haussoulie, *La vie municipale en Attique*, p. 7; cf. Martin, *op. cit.*, p. 49.

² CIA, I, 57, cited by Glotz, s.v. "Ekklesia," *Dict. des antiquités*.

³ Keil recognizes this principle. "6000 Stimmen gelten als die die politische Gesamtbürgerschaft voll repräsentierende Stimmzahl, wie sie für gewisse Beschlüsse (νόμοι ἐπ' ἀνδρὶ) gesetzlich gefordert war: 6000 ist die Gesamtzahl der Zahl der Richter. . . . In der ἐκκλησία ist der gesamte δῆμος als politische, in der ἡλία als richterliche Körperschaft zusammengefasst.—Gercke und Norden, "Griechische Staatsaltertümer," in *Einleitung in die Altertumswissenschaft*, III, 362.